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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,004	06/20/2003	Marvin Yakos	1031005	1003
24253	7590	11/03/2005	EXAMINER	
JOEL I ROSENBLATT 445 11TH AVENUE INDIALANTIC, FL 32903			ALPERT, JAMES M	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/604,004

Applicant(s)

YAKOS, MARVIN

Examiner

James Alpert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/28/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The following communication is in response to Applicant's amendment filed on July 28, 2005.

Status of Claims

Claims 1-20 are cancelled, while Claims 21-40 are new. Claims 21-40 are therefore currently pending.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new grounds of rejection, necessitated by Applicant's newly submitted claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to Claims 21-40, these claims refer quite extensively to the word "site". Unfortunately, there is no clear meaning in the art as to the definition of this term. Specifically, one interpretation of the term may include a physical site for a store or shop. A second interpretation would include an electronic web site, commonly found on the World Wide Web. A third interpretation would include some possible combination of

the first two interpretations. As such, the claims need to be corrected to clarify the meaning of the term "site".

With regard to claims 22, 26, 28, 30, 31, 33, 37, 39-40, these claims refer to use of the word "target organization". This phrase has no regularly excepted meaning in the art. If Applicant intends that charitable organizations in some way be benefited from transactions, he should express so. Further, the Examiner is given wide latitude in interpreting the claims. See In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). This is important when considering the following.

With regard to Claims 28-29, 39-40, the use of the term "associated presence" is confusing. There is no meaning of this term in the art, and as such appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos et al, U.S. Patent #6029141 in view of Major, U.S Patent Application Publication #20020174063.

With regard to Claims 21, 30-33, Bezos teaches the system and method comprising:

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establishing data communications between a system control site and a plurality of separate sites; (Figures #1-2; Col. 6, lines 12-14)

recording separate customer vendor transactions at two or more of said plurality of separate sites, (Col. 6, lines 12-14; Col. 12, lines 27-41)

identifying system participants related to said separate customer vendor transactions; (Col. 13, lines 10-28)

storing a plurality of separate respective marketing distribution levels, for said system participants and identifying from said plurality of marketing levels, respective levels for said system participants; and
(Col. 6, lines 48-58; Col. 13, lines 10-28; Col. 14, lines 38-51)

It is not entirely clear whether Bezos specifically teaches the system and method comprising:

calculating separate payments for said separate system participants, at said respective levels.

That is to say, although Bezos discloses the situation wherein transaction data and information associated with purchases are collected from separate associate web sites, the method appears to look to a unified payment, collected at a central location. However, calculating separate payments for a commission in addition to a transaction amount would seem like an easy enough modification. In fact, Major teaches this limitation at (Page 1, Paras. 5-7), which describes calculating separate donations and payments arising out of transactions by a consumer from various merchants. It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to combine the teachings of Bezos, relating to distributed marketing, with the teachings of Major, relating to calculating a separate payment in addition to a transaction amount. The motivation for such a combination is found in Bezos at (Col. 3,

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lines 26-32) which discusses the benefits of distributed marketing to organizations with excellent reputations.

With regard to Claim 34, 22, Bezos teaches the system and method comprising:

identifying a respective separate level within said plurality of marketing distribution levels, for said target organization, and calculating a separate payment for target organization. (Col. 6, lines 48-58)

With regard to Claims 35, 23, Bezos teaches the system and method comprising:

paying said respective system participants. (Col. 19, lines 66-67)

With regard to Claims 36, 24, Bezos teaches the system and method comprising:

identifying separate sites of said plurality of sites as respective system participant sites; (Col. 6, lines 12-14)

registering said system participants, including said customers, for said respective system participant sites, as registered system participants; (Col. 6, lines 19-22)

and calculating a separate payment for a respective system participant site in response to a transaction by a said registered system participant for said respective system participant site. (Col. 7, lines 6-20)

With regard to Claims 37,25,29 Bezos teaches the system and method comprising:

identifying a single system participant with a respective site, identifying a said separate site as an account manager site, and identifying a said separate level with said account manager site. (Col. 13, lines 10-28)

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With regard to Claims 38, 26, Bezos teaches the system and method comprising:

registering said system participants by an account manager site, including a customer or target organization or vendor, and recording a respective transaction for a customer, or target organization, or vendor, for said account manager. (Col. 2, lines 19-38)

With regard to Claims 39,27, Bezos teaches the system and method comprising:

authorizing and making payments to each of said system participants at a level of compensation responsive to said respective level for each said system participants. (Col. 6, lines 48-58)

With regard to Claims 40, 28, Bezos teaches the system and method comprising:

storing separate respective levels of compensation for said system participants including separate levels of compensation for at least a target organization, or vendors with a primary or associated presence, or an account manager, or said system control site. (Col. 6, lines 48-58)

Conclusion

Applicant's submission of new claims and amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Alpert whose telephone number is (571) 272-6738. The examiner can normally be reached on M-F 9:30-6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.


James M. Alpert
October 25, 2005



VINCENT MILLIN
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